

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DANIELS CEDAR PRODUCTS, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 80-198

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER**

This matter, the request for review of a regulatory order issued by the Department of Ecology (DOE) under RCW 90.48.120 of the Water Pollution Control Act, came before the Pollution Control Hearings Board, Nat Washington (presiding), and Mariann Craft Norton at a hearing on December 5, 1980, in Lacey, Washington. Ms. Norton is no longer a member of the Board and did not participate in the final decision.

This matter was heard in conjunction with SHB No. 80-32, a case involving the same parties, the same subject matter and relating to a

1 request for review by Daniels Cedar Products, Inc., of a substantial
2 development permit with a conditional use issued by Grays Harbor
3 County, but denied by DOE.

4 Appellant Daniels Cedar Products, Inc., was represented by its
5 president David H. Daniels; respondent was represented by Jeffrey D.
6 Goltz, Assistant Attorney General.

7 Having heard the testimony, having examined the exhibits, having
8 considered the contentions of the parties, and Board member David
9 Akana having read the record of the proceedings, the Pollution Control
10 Hearings Board makes these

11 FINDINGS OF FACT

12 I

13 Appellant Daniels Cedar Products, Inc., (hereinafter "Daniels
14 Cedar" or "appellant") operates a cedar products mill which produces
15 shakes, shingles and hog fuel. The mill is located in a portion of
16 section 11, township 17 north, range 9, W.W.M. in Junction City, Grays
17 Harbor County on property belonging to Burlington Northern. The mill
18 is adjacent to a marsh (hereinafter "Elliot Marsh") which is
19 contiguous with Elliot slough, a backwater of the Chehalis River.

20 Commencing in 1977 Daniels Cedar began disposing of cedar wood
21 waste by depositing it in Elliot Marsh on adjacent property belonging
22 to Burlington Northern and Weyerhaeuser Timber Company. The cedar
23 waste thus deposited has formed a solid waste fill which has an area
24 of about one acre and an average depth of about 5 feet, as shown on
25 exhibit R-16. No impervious fill or dike prevents wood waste leachate
26 from entering the waters of Elliot Marsh.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 Daniels Cedar had no permit of any kind authorizing it to deposit
2 solid waste material in the marsh which is a part of the waters of the
3 state and subject to the provisions of chapter 90.58 RCW as well as to
4 chapter 90.48 RCW.

5 II

6 On October 2, 1980, DOE issued a regulatory order (Docket No. DE
7 80-598) to Daniels, under RCW 90.48.120, ordering the removal of the
8 wood waste so placed. It is from this order that appellant has
9 appealed.

10 On November 14, 1980, DOE amended the October 2, 1980, order
11 correcting the name of the street westerly of the fill from "Bishop"
12 street to "Hagara" street.

13 On October 2, 1980, when the DOE regulatory order was issued,
14 Daniels Cedar had already completed the fill, and, after completing
15 it, had applied for and received a substantial development/conditional
16 use permit from Grays Harbor County allowing the fill to remain, DOE
17 on August 18, 1980, had denied the permit; Daniels had on September
18 16, 1980, appealed DOE's order denying the permit. On October 2,
19 1980, when DOE issued its regulatory order under RCW 90.48.120(2)
20 Daniels had clearly indicated its intention not to voluntarily remove
21 the fill. Under these circumstances DOE had reason to believe that
22 immediate action under RCW 90.48.120(2) was necessary to accomplish
23 the purpose of chapter 90.48 RCW.

24 The amended order (Docket No. DE 80-598 First Amendment) provided:

25 IT IS ORDERED THAT Daniels Cedar Products, Inc.,
26 shall, upon receipt of this Order, take appropriate
action in accordance with the following instructions:

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

Immediately remove all of the wood waste that lies northerly of Burlington Northern Railroad and easterly of Hagara Street (Junction City Road).

III

DOE contends the wood waste fill, placed as it is in a marsh with a direct connection to the class A waters of Elliot Slough, violates RCW 90.48.080 which states:

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters . . .

Pollution is defined by RCW 90.48.020 as follows:

Whenever the word "pollution" is used in this chapter it shall be construed to mean such contamination, or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

The term "waters of the state" referred to in RCW 90.48.080 is defined in RCW 90.48.020:

Whenever the words "waters of the state" shall be used in this chapter, they shall be construed to include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

IV

Since the wood waste in the Daniels fill is not isolated from water action, ground water from a higher elevation, water in the marsh and direct rain falling on the fill, all such waters carry leachate from the fill into the marsh. The marsh is also subject to daily tidal action which also promotes the release of leachate into the marsh. The receding tide and the normal easterly flow of water from the marsh combine to transport the leachate into Elliot Slough and on into the Chehalis River.

V

Elliot Marsh and others like it produce organic material which breaks down into minute particles known as detritus. Detritus is a major food item for small organisms which in turn are the major food source for juvenile salmon and most other juvenile fish. Wood waste leachate is toxic to these small organisms and inhibits their growth.

Elliot Slough and the lower Chehalis River, which are both lightly saline, are important temporary habitation sites for juvenile salmon on their way to the ocean. They are born in fresh water and in the process of traveling to the ocean they must spend a transition time in lightly saline water before venturing into the highly saline water of the ocean. Thus any diminution in the number and quality of the small food organisms in the marsh, slough and river will have an adverse impact on juvenile salmon migrating downstream and on resident juvenile fish as well.

VI

The DOE on December 1, 1980, took two samples of water from Elliot Marsh. Sample No. 1 was taken from water which was dark in color and appeared to be affected by leachate. It was taken close to the fill on the easterly side and in the path of the flow of water from the fill area. Sample No. 2 was taken from lighter colored water a point northerly and westerly of the fill at a place not in the path of the flow of water from the fill area. Sample No. 2 was the control sample.

The samples when tested showed a high concentration of leachate in sample No. 1 and a low concentration in No. 2. Sample No. 1 had eight times as much tannin and nine times as much lignin as the control sample (No. 2). Leachate from wood waste consists principally of lignin and tannin.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Elliot Marsh, Elliot Slough and the Chehalis River are waters of the State within the meaning of RCW 90.48.020 and RCW 90.48.080.

II

The leachates which were released by the wood waste placed in Elliot Marsh by the appellant were pollutants within the meaning of RCW 90.48.020 and RCW 90.48.080.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 III

2 By placing the cedar waste fill in Elliot Marsh the appellant
3 polluted waters of the state in violation of RCW 90.48.080.

4 IV

5 DOE acted within the powers granted to it by law and acted
6 reasonably under the circumstances in issuing the order appealed from.

7 V

8 The Department of Ecology Order (Docket No. DE 80-598 First
9 Amendment) should be affirmed.

10 VI

11 Any Finding of Fact which should be deemed a Conclusion of Law is
12 hereby adopted as such.

13 From these Conclusions the Board enters this
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ORDER

The Department of Ecology order (Docket No. DE 80-598 First Amendment) is affirmed.

DATED this 1st day of June, 1981.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member